

## REMARKS

Applicants note that all amendments and cancellations of Claims presented herein are made without acquiescing to any of the Examiner's arguments or rejections, and solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG),<sup>1</sup> and without waiving the right to prosecute the amended or cancelled Claims (or similar Claims) in the future.

In the Office Action mailed July 7, 2010, the Examiner objected to Claim 1 for a misspelling of SEQ ID NO:1. Applicants have amended Claim 1 to correct the spelling error. Accordingly, applicants respectfully request that the objection be withdrawn.

In the Office Action mailed July 7, 2010, the Examiner objected to the Information Disclosure Statement submitted on January 5, 2010. Applicants would like note that references not considered were previously transmitted to the U.S. Patent Office via the International Search Report dated July 11, 2005, International Patent Application No. PCT/KR2005/000532, of which this application claims the benefit of priority. Applicants would also like to bring to the Examiner's attention that Reference 2, JP S57-39791 (Date of Publication 1982-05-03) has not been considered as an English translation of the JP S57-39791 was not provided, however, the Examiner has accepted the English translation listed in the non-literature section of the Information Disclosure Statement. Applicants respectfully request the Examiner make these citations of official record in this application.

In the Office Action mailed July 7, 2010, the Examiner issued several rejections. Each of the rejections is discussed in detail below.

### I. The Claims are Directed to Statutory Subject Matter

The Examiner rejects Claims 1-5 under 35 U.S.C. 101 as allegedly directed to non-statutory subject matter. Applicants respectfully disagree. Nonetheless, in order to further the business interests of the applicants, and without acquiescing to any of the Examiner's arguments or rejections, and solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG), and without waiving the right to prosecute the amended claims (or similar claims) in the future, applicants have amended Claims 1-5 to recite that the gene is isolated. Accordingly, applicants submit that the claims are directed to statutory subject matter and

respectfully request that the rejection be withdrawn.

**II. The Claims are Definite**

The Examiner rejects Claims 1-5 under 35 U.S.C. 112, second paragraph, as allegedly indefinite due to the recitation of “represented by.” Applicants respectfully disagree. Nonetheless, in order to further the business interests of the applicants, and without acquiescing to any of the Examiner's arguments or rejections, and solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG), and without waiving the right to prosecute the amended claims (or similar claims) in the future, applicants have amended Claim 1 to recite “as set forth” as suggested by the Examiner. Accordingly, applicants submit that the claims are definite and respectfully request that the rejection be withdrawn.

**III. The Claims are Enabled**

The Examiner rejects Claims 3 and 5 under 35 U.S.C. 112, first paragraph, as allegedly lacking enablement. Applicants provide herewith a copy of a deposit statement showing that the vector of Claim 3 having accession number KCCM-10557 was deposited under the Budapest treaty, along with a statement attesting to the deposit and indicating that upon issuance of the Patent the instant invention will be irrevocably and without restriction released to the public. Accordingly, applicants submit that the claims are enabled and respectfully request that the rejection be withdrawn.

**IV. The Claims are Novel**

The Examiner rejects Claims 1, 2 and 4 under 35 U.S.C. 102(b) as allegedly anticipated by Timberlake (US Application 12,336,504; hereinafter Timberlake). Applicants respectfully disagree. Amended Claim 1 recites the isolated nucleic acid sequence of SEQ ID NO:1. Timberlake does not teach or suggest a nucleic acid sequence set forth in SEQ ID NO:1. Timberlake further does not teach or suggest a polynucleotide encoding a  $\gamma$ -butyrobetaine hydroxylase. Accordingly, Timberlake does not teach all of the elements of the presently claimed invention as required for rejection under 35 U.S.C. 102. Accordingly, the rejection should be withdrawn.

The Examiner further rejects Claim 1 under 35 U.S.C. 102(b) as allegedly

anticipated by Galagan et al (Nature 422:859 2003; hereinafter Galagan). Applicants respectfully disagree. Galagan does not teach or suggest a polynucleotide that encodes a  $\gamma$ -butyrobetaine hydroxylase as is required by the presently claimed invention. Glagan is silent on the activity of polypeptides encoded by the disclosed polynucleotides. Accordingly, Galagan does not teach all of the elements of the presently claimed invention as required for rejection under 35 U.S.C. 102. Accordingly, the rejection should be withdrawn.

## CONCLUSION

If a telephone interview would aid in the prosecution of this application, the Examiner is encouraged to call the undersigned collect at (608) 662-1277.

Date: December 3, 2010

/Tanya A. Arenson/

Tanya A. Arenson  
Registration No. 47,391

Casimir Jones S.C.  
2275 Deming Way, Suite 310  
Middleton, WI, 53562  
(608) 662-1277